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January 15, 1999



NOTICE OF EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: CC Docket No. 98-146 - Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996

Dear Ms. Salas:

On January 14, 1998, on behalf of the Telecommunications Industry Association (TIA), Matthew Flanigan, President, Grant Seiffert, Vice President - Government Relations, and the undersigned met with Commissioner Gloria Tristani and Legal Advisor Paul Gallant. On January 15, 1998, these TIA representatives met with Commissioner Harold Furchtgott-Roth and Legal Advisors Paul Misener and Kevin Martin. The discussions related to the above-captioned proceeding and covered issues addressed in TIA submissions previously filed in this docket. The enclosed written presentation accurately summarizes positions advocated during these meetings.

An original and one copy of this notice are submitted and copies have been forwarded to the Commission staff mentioned above, pursuant to 47 C.F.R. § 1.1208(b)(2). If you have any questions about this submission, please contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Derek R. Khlopin".

Derek R. Khlopin
Regulatory Counsel

cc: Commissioner Gloria Tristani
Commissioner Harold Furchtgott-Roth
Paul Gallant
Paul Misener
Kevin Martin

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Section 706 - Deployment of Advanced Telecommunications Capability

- TIA believes that **advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion** and we continue to urge the FCC to remove regulatory barriers to investment in advanced capability and proactively encourage competition in the local loop.
- TIA agrees with the Commission's assessment that expanding the capacity and capability of "the last mile" serving residential subscribers is critical to the achievement of full deployment of advanced services. TIA finds that despite the availability of advanced technologies, including DSL (digital subscriber line), cable modems, and fiber optics, they are not yet being widely deployed. While it is true that the carriers are increasing their rollout of DSL and cable modems, it will be a long time, if ever, that the deployment reaches rural and low-cost areas.

Section 706 - Deployment of Advanced Telecommunications Capability - continued

- There is a **clear demand** for advanced telecommunications capability and the **equipment exists today** to deploy such technologies. The bottleneck in bringing advanced services to consumers resides primarily in regulatory barriers and inadequate access for competitive providers.
- In our filings we have stated that to create market certainty, **some minimum level of service** should be adopted in defining what advanced telecommunications capability is. We suggest that a data transmission **speed exceeding 128 kbps**, both downstream and upstream, is appropriate as a minimum near-term and transitional deployment target.
 - We arrive at this figure based on the statutory language that such capability must include the ability to **originate and receive high-quality video**, as well as a realization that the statute aims to encourage new technologies, beyond, for example, today's ISDN. In other words, the statute is aiming for true broadband technologies.

Section 706 - Deployment of Advanced Telecommunications Capability - continued

- Additionally, only technologies above this threshold (and maybe well above it) will support advanced applications that promise innumerable benefits to our society, such as telemedicine, distance learning, and technologies that will allow disabled consumers to effectively participate in the information revolution.
- We emphasize, however, that by suggesting above 128 kbps as a starting point, TIA is not implying that this benchmark remain static. Current state-of-the-art technologies should not be regarded by the Commission as the final resting place for a Section 706 determination, but rather the mere beginning. The **definition should evolve** and as technologies become widely deployed, or commonplace, the capability measurements should be increased.
- TIA therefore urges the Commission to keep this docket open and to review the deployment of advanced telecommunications on a regular basis (*i.e.*, annually on the anniversary of the 1996 Act), as envisioned by Section 706. If it closes the proceeding, the Commission will lose a valuable tool for spurring deployment of next-generation broadband infrastructure. For example, the ubiquitous installation of fiber in the local loop should be a next step to meet the constantly increasing demand for bandwidth. Other solutions exist today that can bring broadband to all Americans, including those based on fixed wireless and satellite technologies.

Section 706 - Deployment of Advanced Telecommunications Capability - continued

- Cable modems may meet this definition of advanced telecommunications capability. However, not all cable systems have been upgraded to hybrid fiber/coaxial cable, which is necessary to support two-way broadband capability.
- Because cable is a shared architecture, too many users on a system will reduce, sometimes drastically, the capability. Solutions might include a cable company allocating more of its bandwidth to these services, or putting less households on the same node.
- Cable modems certainly hold tremendous potential. But TIA is concerned that requiring cable operators to open their networks to all ISPs will chill their incentive to invest in upgrading their plant. Considering the capital available to AOL and other Internet-related companies, perhaps they can be encouraged to build competing broadband infrastructures. This would spread the risks involved with investing in new network facilities among multiple service providers.

Section 706 - Deployment of Advanced Telecommunications Capability - continued

- Some versions of DSL are very capable of high-capacity broadband communications. Yet, generally it is not these versions of DSL that are being deployed. The ADSL that is being rolled out varies, but based on the length of the copper loop, and other factors, **the transmission speeds can be disappointingly slower** than anticipated. This is particularly true of “DSL Lite,” a splitterless version of DSL, that is gaining favor after endorsement from the ITU. Second, although BOCs are rolling out ADSL, it is clear that they **cannot target all markets** initially. The risks are too great, particularly in light of the fact that they may have to unbundle their advanced offerings. Additionally, it has been estimated that as many as 40 percent of loops cannot support DSL technologies.
- Nonetheless, the widespread deployment of DSL is critical to keep Internet connection speeds continually increasing. TIA does not believe **that unbundling obligations should apply to DSL electronics added to copper loops**. Requiring ILECs to make available the underlying essential facilities of the local loop is sufficient to promote competition. Competitors can upgrade the loops they have obtained from the ILEC with DSL and other advanced equipment just as the ILEC can. As a separate affiliate requirement for advanced services also is likely to inhibit service rollout, non-structural safeguards may be adequate to protect competition in a nascent market without dominant providers.

Section 706 - Deployment of Advanced Telecommunications Capability - continued

- In finding ways to encourage deployment, the FCC should establish incentives, or remove disincentives. We have suggested that the FCC offer optional relief to all telecom providers under Section 706 via "social contracts" or "mutual agreements" which would allow a carrier to design a specific plan of regulatory relief that is linked to deployment of advanced telecommunications capability; or develop a plan customized to meet the needs of a specific class of carriers.
- Affording BOCs the opportunity to offer interstate advanced services only through a separate affiliate may be an insufficient incentive if they must unbundle their DSL or other advanced offerings and make them available to competitors, or in the absence of the unbundling obligations, if they cannot offer transport between LATAs or state boundaries.